

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to sections 104 and 105 of the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.04 and 2-1801.05), and Mayor's Order 86-38, dated March 4, 1986, hereby gives notice of the adoption of the following emergency rulemaking. This emergency rulemaking will amend Title 16, Chapter 33 of the D.C. Municipal Regulations (DCMR) to amend sections 3309.1, 3309.2, and 3309.3(c) to cite to the current District of Columbia Construction Codes.

This emergency rulemaking is necessitated by the immediate need to address a gap in the enforcement of compliance with the current District of Columbia Construction Codes, which were published in final form in the *D.C. Register* on December 26, 2008 (55 DCR 13094). Upon the expiration in early November of previous emergency rulemaking, published in the *D.C. Register* on July 3, 2009 (56 DCR 5431), violations of the Construction Codes would not be subject to notices of violation and enforcement proceedings because the existing regulations refer to a previous version of the Construction Codes. Violations of the Construction Codes pose an immediate and continuing threat to the public health and safety.

This emergency rule was adopted on October 23, 2009, to become effective November 1, 2009. This emergency rule will remain in effect for up to one hundred twenty (120) days, unless earlier superseded by a notice of final rulemaking.

This emergency and proposed rulemaking supersedes the notice of emergency and proposed rulemaking published in the *D.C. Register* on March 6, 2009 (56 DCR 2011).

The Director also hereby gives notice of the intent to adopt this rule, in final, in not less than thirty (30) days from the publication of this notice in the *D.C. Register*.

Title 16, Chapter 33, Section 3309.1 of the DCMR is amended to read as follows:

- 3309.1 Violation of any of the following provisions shall be a Class 1 infraction:
- (a) 12G DCMR PM § 705.1 (failure to remedy dangerous conditions to remove hazardous materials);
 - (b) 12A DCMR § 114.10 (failure to comply with terms of a stop work order);
 - (c) 12A DCMR § 114.3 (unauthorized removal of a posted stop work order);
 - (d) Reserved;
 - (e) Reserved;
 - (f) IBC § 709.3 (failure to maintain all required fire resistance rated doors or smoke barriers);

- (g) IFC § 901.4.1 (failure to maintain in an operative condition at all times fire protection and life safety systems, devices, units, or service equipment);
- (h) 12H DCMR § F-906.1 (failure to provide fire extinguishers);
- (i) IFC § 1003.1 (failure to maintain in a safe condition and free of all obstructions the means of egress from each part of the building);
- (j) IBC § 1004.1 (overcrowding or admitting persons beyond the established posted occupants load);
- (k) IFC § 508.5.4 (fire hydrants, fire department inlet connections, or fire protection system control valves are obstructed in such manner as to interfere with fire fighting access);
- (l) IFC § 1006.1 (failure to provide adequate lighting for stairways, hallways, and other means of egress); or
- (m) IBC § 1024.6 (exits fail to discharge directly at a public way or at a yard, court, or open space of the required width and size to provide all occupants with a safe access to a public way).

Section 3309.2 is amended to read as follows

3309.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) IPMC § 307.1 (permitting the accumulation of waste paper, wood, hay straws, weeds, litter, or combustible or flammable waste or rubbish of any kind);
- (b) IFC § 904.11 (failure to provide or maintain an automatic activation kitchen hood fire extinguishing system);
- (c) IFC § 904.11.1 (failure to provide or maintain a manual activation device for the hood fire extinguishing system);
- (d) NFPA 70 § 110.32 (failure to provide the required clearance between all electrical service equipment and storage);
- (e) IFC § 904.11.5 (failure to provide a sufficient number of portable fire extinguishers);
- (f) IFC § 906.2 or 12G DCMR PM § 705.2 (failure to maintain, test, or recharge hand-operated portable fire extinguishing equipment);
- (g) IFC § 315.2.2 (storing combustible or flammable materials on any portion of an exit, elevator car, stairway, fire escape, or other means of egress);
- (h) IBC § 1005.1 (door openings fail to meet the requirements of minimum width based upon occupant load);
- (i) IBC § 1008.1.9 (doors are not equipped with approved panic hardware);
- (j) IBC § 1008.1.2 (exit doors swing in the wrong direction);

- (k) 12E DCMR M § 1004.1 (failure to provide an oil burner emergency switch);
- (l) IBC § 1011.5.3 (failure to provide emergency lights, alarms, or power back-ups);
- (m) IBC § 1011.1 (permitting decorations, furnishings, or equipment, which impairs the visibility of exit signs);
- (n) IBC § 715.4.7.3 (failure to maintain self-closing and automatic doors or to provide a fire or smoke barrier);
- (o) IBC § 1004.3 (failure to conspicuously post sign stating the number of occupants permitted within such space for each place of assembly);
- (p) IBC § 1011.1 (failure to maintain exit signs in theaters or other places of public assembly); or
- (q) IBC § 806 (decorative materials are not non-combustible or flame resistant).

Section 3309.3(c) is amended to read as follows:

- 3309.3 (c) Any provision of the District of Columbia Construction Codes adopted pursuant to the Construction Codes Approval and Amendment Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code §§ 6-1401 *et seq.*) which is not cited elsewhere in this section shall be a Class 3 infraction.

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, NE, Suite 9500, Washington, D.C. 20002, or via e-mail at helder.gil@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the “DCRA News” link and then clicking on the “Rulemaking” tab.